

**WILLIAM W. MERCER**  
United States Attorney

**LEIF M. JOHNSON**  
Assistant U.S. Attorney  
U.S. Attorney's Office  
P.O. Box 1478  
Billings, MT 59103  
2929 Third Ave. North, Suite 400  
Billings, MT 59101  
Phone: (406) 247-4630  
FAX: (406) 657-6989

**THOMAS L. SANSONETTI**  
Assistant Attorney General  
Environment and Natural Resources Division

**Alan D. Greenberg**  
Environmental Defense Section  
999 18<sup>th</sup> Street, Suite 945  
Denver, CO 80202  
Phone: (303) 312-7324  
Fax: (303) 312-7331

**ATTORNEYS FOR PLAINTIFF**  
United States of America

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

---

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**YELLOWSTONE MOUNTAIN CLUB, LLC;  
YELLOWSTONE DEVELOPMENT, LLC;  
BLIXSETH GROUP, INC.; and THE RANCHES  
AT YELLOWSTONE CLUB, LLC,**

**Defendants.**

---

**CV 04-58-BU-RWA**

**COMPLAINT**

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency, alleges as follows:

### **NATURE OF THE ACTION**

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Yellowstone Mountain Club, LLC; Yellowstone Development, LLC; Blixseth Group, Inc.; and The Ranches at Yellowstone Club, LLC (collectively, "Defendants") for the discharge of pollutants into waters of the United States in Madison County, Montana without authorization by the United States Department of the Army, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of the United States Environmental Protection Agency, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Montana pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendants conduct business in

this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

5. Notice of the commencement of this action has been provided to the State of Montana pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

### **THE PARTIES**

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant Yellowstone Mountain Club, LLC is a limited liability company organized under the laws of the State of Montana. Yellowstone Mountain Club, LLC's address is 1 Yellowstone Club Trail, Big Sky, Montana.

8. Defendant Yellowstone Development, LLC is a limited liability company organized under the laws of the State of Montana. Yellowstone Development LLC's address is 1 Yellowstone Club Trail, Big Sky, Montana.

9. Defendant Blixseth Group, Inc. is a corporation organized under the laws of the State of Oregon. Blixseth Group, Inc's address is 71-534 Sahara Road, Rancho Mirage, California.

10. Defendant The Ranches at Yellowstone Club, LLC is a limited liability company organized under the laws of the State of Montana. The Ranches at Yellowstone Club LLC's address is 1 Yellowstone Club Trail, Big Sky, Montana.

11. At all times relevant to the Complaint, one or more of Defendants either owned or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled or engaged in the activities that occurred on the property.

## **STATUTORY BACKGROUND**

12. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued pursuant to CWA section 404, 33 U.S.C. § 1344.

13. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

14. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

15. CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, dredged spoil, rock, sand and cellar dirt.

16. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

17. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7), and 40 C.F.R. § 232.2, define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

18. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

19. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

20. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership [or] association."

21. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

22. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a) or who violates any order issued by the Administrator of the Environmental Protection Agency under section 301(a), 33 U.S.C. § 1311(a).

### **GENERAL ALLEGATIONS**

23. Commencing in approximately 1997, one or more of the Defendants and/or persons acting on their behalf, discharged dredged or fill material into waters of the United States without a permit under CWA section 404 at property known as The Yellowstone Mountain Club in Madison County, Montana (hereinafter referred to as "the Yellowstone Mountain Club site")

24. The dredged or fill material that one or more of the Defendants and/or persons acting on their behalf caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

25. One or more of the Defendants and/or persons acting on their behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

26. Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged or fill material into waters of the United States as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344, except for nine permit authorizations under Nationwide permits 14 and 39, seven of which permit authorizations were subsequently suspended due to the scope of impacts associated with the Yellowstone Mountain Club development.

27. Defendants either owned, leased or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

28. One or more of the Defendants conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities at issue in Paragraph 23.

29. Defendants are persons within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

30. Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Yellowstone Mountain Club site.

31. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

32. Unless enjoined, Defendants are likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain at the Yellowstone Mountain Club site in violation of CWA section 301, 33 U.S.C. § 1311.

#### COUNT 1

33. Plaintiff repeats and realleges the allegations set forth in Paragraphs 23 through 32.

34. Commencing in approximately 1997, one or more of the Defendants and/or persons acting on their behalf discharged dredged or fill material into streams, creeks, drainages and wetlands at the Yellowstone Mountain Club site located in Madison County, Montana in connection with the construction of road crossings, ski runs, and the golf course.

35. The streams, creeks, drainages and wetlands at the Yellowstone Mountain Club site into which one or more of the Defendants discharged dredged or fill material are "waters of the United States" within the meaning of the CWA and the regulations promulgated thereunder.

36. Defendants' activities at the Yellowstone Mountain Club site resulted in the filling of or adverse impacts to approximately two miles of creeks and streams and approximately 10 acres of wetland which are waters of the United States.

#### COUNT 2

37. Plaintiff repeats and realleges the allegations set forth in Paragraphs 23 through 36.

38. On September 6, 2001, Region 8 of the United States Environmental Protection Agency and the Montana Department of Environmental Quality issued a Findings of Violation and Order for Compliance to Defendants.

39. The Administrative Order specified certain actions that Defendants were required to complete in order to come into compliance with the Clean Water Act.

40. Defendants did not comply with certain requirements of the Administrative Order and failed to comply with other requirements in a timely manner.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

That the Defendants be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

That the Defendants, or any combination thereof, be enjoined to undertake measures, at their own expense and at the direction of the United States Environmental Protection Agency, to effect complete restoration of the Yellowstone Mountain Club site and/or to conduct compensatory mitigation at the Yellowstone Mountain Club site, as appropriate;

That Defendants be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

That Defendants be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of violation of the Administrative Order for Compliance issued under CWA section 309 (a), 33 U.S.C. § 1319(a).

That the United States be awarded costs and disbursements in this action; and

That this Court grant Plaintiff United States of America, such other relief as the Court may deem just and proper.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.



WILLIAM W. MERCER  
United States Attorney

---

LEIF M. JOHNSON  
Assistant U.S. Attorney

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division

Alan D. Greenberg  
Environmental Defense Section

OF COUNSEL:

Wendy Silver, Attorney  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466